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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 COUNTY OF ALAMEDA  
8 UNLIMITED CIVIL JURISDICTION  
9

11 MICHAEL DIPIRRO,  
12 Plaintiff,

13 v.

14  
15 EUROMARKET DESIGNS, INC. dba  
CRATE & BARREL; *et al.*,  
16 Defendants.  
17

Case No. RG14710225

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.*)



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**1.6 Notice of Violation**

On or about September 30, 2013, DiPirro served Euromarket Designs and the requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of DiPirro’s allegation that Euromarket Designs and its retailers were in violation of Proposition 65 for failing to warn their customers and consumers in California that the Products expose users to DEHP.

**1.7 Complaint**

On January 15, 2014, DiPirro filed the instant action against Euromarket Designs (“Complaint”) for the alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

**1.8 No Admission**

Euromarket Designs denies the material, factual and legal allegations contained in the Notice and Complaint, and they maintain that all of the products that they have sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Euromarket Design’s obligations, responsibilities, and duties under this Consent Judgment.

**1.9 Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Euromarket Designs as to the allegations in the Complaint, that venue is proper in Alameda County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

**1.10 Effective Date**

For purposes of this Consent Judgment, the term “Effective Date” shall mean June 23, 2014.

1           **2.       INJUNCTIVE RELIEF: REFORMULATION**

2           **2.1.** Except as set forth in Section 2.2, commencing on the Effective Date and continuing  
3 thereafter, Euromarket Designs shall only import, manufacture, sell or distribute for sale to California  
4 consumers Products that are “Reformulated Products.” For purposes of this Consent Judgment,  
5 Reformulated Products contain a maximum of 1,000 parts per million (0.1%) DEHP content in any  
6 accessible component (i.e., any component that may be touched or handled during a reasonably  
7 foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or  
8 equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP  
9 content in a solid substance.

10           **2.2** From the Effective Date until January 1, 2015 Euromarket Designs (including its retail  
11 outlet locations in California) shall not sell to California consumers Products which are not  
12 Reformulated Products, unless all of the following criteria are met: (a) clear and reasonable  
13 warnings in the form set forth below shall appear on such Products; (b) Euromarket Designs shall  
14 have purchased, or contracted for, or taken delivery of, or distributed to its retail outlets, such  
15 Products prior to the Effective Date; and (c) the Product is not primarily intended for use by  
16 individuals twelve years of age or younger. Each warning shall be prominently placed with such  
17 conspicuousness as compared with other words, statements, designs, or devices as to render it likely  
18 to be read and understood by an ordinary individual under customary conditions before purchase or  
19 use. Each warning shall be provided in a manner such that the consumer or user understands to  
20 which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. If a  
21 warning is provided pursuant to this Section 2.2, the text shall be as follows, with the text in  
22 [brackets] being optional at the discretion of Euromarket Designs:

23           **[California Proposition 65]**

24           **WARNING:**           **This product contains a [phthalate] chemical known [to**  
25                                   **the State of California] to cause birth defects or other**  
26                                   **reproductive harm.**

1           **2.3.** If a customer returns a Product bearing a warning to a retail outlet in California,  
2 Euromarket shall be allowed to sell such Product at a retail outlet in California (provided the warning  
3 remains on the Product) so long as the original sale date was before January 1, 2015.

4           **3.       MONETARY PAYMENTS**

5                   **3.1       Civil Penalty Payments**

6                   Pursuant to Health & Safety Code § 25249.7(b), Euromarket Designs shall pay civil penalties  
7 totaling \$6,439.00. Within five (5) business days of Court approval of this Consent Judgment,  
8 Euromarket Designs shall pay the civil penalty of \$6,439.00. The penalty payment shall be allocated  
9 according to Health & Safety Code § 25249.12 (c) (1) and (d), with seventy-five percent (75%) of the  
10 penalty amount earmarked for the California Office of Environmental Health Hazard Assessment  
11 (“OEHHA”) and the remaining twenty-five (25%) of the penalty amount earmarked for DiPirro.

12                   **3.2       Reimbursement of DiPirro’s Fees and Costs**

13                   The Parties acknowledge that DiPirro and his counsel offered to resolve this dispute without  
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue  
15 to be resolved after the material terms of the agreement had been settled. Shortly after all other  
16 settlement terms had been finalized, Euromarket Designs expressed a desire to resolve the fees and  
17 costs. The Parties then attempted to (and did) reach an accord on the compensation due to DiPirro  
18 and his counsel under general contract principles and the private attorney general doctrine codified  
19 at Code of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees and costs  
20 incurred on appeal, if any. Under these legal principles, within five (5) business days of Court  
21 approval of this Consent Judgment, Euromarket Designs shall pay \$53,776.00 for the fees and  
22 costs incurred investigating, litigating, and enforcing this matter, including the fees and costs  
23 incurred (and to be incurred) drafting, negotiating, and obtaining the Court’s approval of this  
24 Consent Judgment in the public interest.

25                   **3.3       Payment Procedures**

26                           **3.3.1       Payments Held in Trust**

27                   Settlement funds shall be delivered to Law Offices of David R. Bush and shall be in  
28 the form of three checks for the for the following amounts made payable to:

1 (a) "Law Office of David R. Bush" in the amount of \$4,829.25 for payment to  
2 OEHHA. Law Office of David R. Bush agrees to forward such funds to OEHHA in a  
3 timely manner.

4 (b) "Law Office of David R. Bush" in the amount of \$1,609.75 as payment to  
5 Michael DiPirro. David R. Bush agrees to forward such funds in a timely manner.;  
6 and

7 (c) "Law Offices of David R. Bush" in the amount of \$53,776, as payment for  
8 attorneys' fees and costs.

9 **3.3.2 Issuance of 1099 Forms**

10 After the Consent Judgment has been approved, Euromarket Designs shall provide  
11 DiPirro's counsel with a separate 1099 form for each of its payments under this Agreement to:

12 (a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010,  
13 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid in the 2014  
14 calendar year;

15 (b) "Michael DiPirro", whose address and tax identification number shall be  
16 furnished upon request after this Consent Judgment has been fully executed by the  
17 Parties for the civil penalty payment in the 2014 calendar year; and

18 (c) "Law Offices of David R. Bush" for fees and costs reimbursed pursuant to  
19 section 3.2.

20 Euromarket Designs shall also provide DiPirro's counsel with two additional 1099 forms for civil  
21 penalty payments made in the 2014 calendar year to OEHHA and DiPirro, if any.

22 **3.3.3 Payment Address**

23 All payments and tax forms required by this Section shall be delivered to the  
24

25 following address:

26 Law Offices of David R. Bush  
27 755 Baywood Drive  
28 Second Floor  
Petaluma, CA 94954.

1       **4. CLAIMS COVERED AND RELEASED**

2               **4.1 DiPirro’s Public Release of Proposition 65 Claims**

3               DiPirro, acting on his own behalf and in the public interest, releases Euromarket Designs, its  
4 officers, directors, attorneys, representatives, shareholders, parents, subsidiaries, affiliates,  
5 divisions, predecessors, successors, subdivisions, downstream distributors and downstream retailers  
6 from all claims for violations of Proposition 65 up through the Effective Date based on exposures to  
7 DEHP from the Products, as set forth in the Notice and the Complaint. Compliance with the terms  
8 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to  
9 DEHP from the Products sold by Euromarket Designs after the Effective Date.

10               **4.2 DiPirro’s Individual Release of Claims**

11               DiPirro, in his individual capacity only and *not* in his representative capacity, also provides a  
12 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
13 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,  
14 liabilities and demands of DiPirro of any nature, character or kind, whether known or unknown,  
15 suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products  
16 imported, manufactured, sold or distributed for sale by Euromarket Designs before the Effective  
17 Date.

18               **4.3 Euromarket Design’s Release of DiPirro**

19               Euromarket Designs on behalf of itself and on behalf of its past and current agents,  
20 representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against  
21 DiPirro and his attorneys and other representatives, for any and all actions taken or statements made  
22 (or those that could have been taken or made) by DiPirro and his attorneys and other  
23 representatives, whether in the course of investigating claims, otherwise seeking to enforce  
24 Proposition 65 against it in this matter, or with respect to the Products.

25       **5. COURT APPROVAL**

26               This Consent Judgment is not effective until it is approved and entered by the Court and shall  
27 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
28 has been fully executed by all Parties.

1       **6. SEVERABILITY**

2           If, subsequent to the execution of this Consent Judgment, any provision of this Consent  
3 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be  
4 adversely affected.

5       **7. GOVERNING LAW**

6           The terms of this Consent Judgment shall be governed by the laws of the state of California  
7 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is  
8 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Euromarket  
9 Designs may provide written notice to DiPirro of any asserted change in the law, and shall have no  
10 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
11 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve  
12 Euromarket Designs from any obligation to comply with any pertinent state or federal toxics control  
13 laws. This Consent Judgment shall be interpreted in accordance with the fair meaning of the terms  
14 herein, without regard to which Party may have drafted any specific provision.

15       **8. NOTICES**

16           Unless specified herein, all correspondence and notices required by this Consent Judgment  
17 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,  
18 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

19 For Euromarket Design:

20           Victoria Donati, Esq., General Counsel  
21           Euromarket Designs, Inc. dba Crate & Barrel  
22           1250 Techny Road  
23           Northbrook, IL 60062

24  
25           with a copy to:

26           Judith M. Praitis, Esq.  
27           Sidley Austin LLP  
28           555 West Fifth Street  
              Los Angeles, CA 90013.

For DiPirro:

1 Law Offices of David R. Bush  
2 Attn: Proposition 65 Coordinator  
3 755 Baywood Drive  
4 Second Floor  
5 Petaluma, CA 94954.

6 Any Party may, from time to time, specify in writing to the other Party a change of address to which  
7 all notices and other communications shall be sent.

8 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

9 This Consent Judgment may be executed in counterparts and by facsimile or portable  
10 document format (PDF) signature, each of which shall be deemed an original, and all of which, when  
11 taken together, shall constitute one and the same document.

12 **10. POST EXECUTION ACTIVITIES**

13 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety  
14 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code  
15 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance  
16 of obtaining such approval, DiPirro and Euromarket Designs agree to mutually employ their best  
17 efforts, and that of their counsel, to support the entry of this agreement as a Consent Judgment, and to  
18 obtain judicial approval of the settlement in a timely manner.

19 **12. MODIFICATION**

20 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
21 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or  
22 application of any Party and the entry of a modified consent judgment by the Court.

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1 **13. AUTHORIZATION**

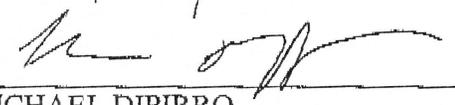
2 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
3 and agree to all of the terms and conditions contained herein.

4 **AGREED TO:**

**AGREED TO:**

5  
6 Date: 6/19/14

Date: \_\_\_\_\_

7  
8 By:   
9 MICHAEL DIPIRRO

By: \_\_\_\_\_

\_\_\_\_\_, General Counsel  
Euromarket Designs, Inc. dba Crate & Barrel

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**13. AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: June 18, 2014

By: \_\_\_\_\_  
MICHAEL DIPIRRO

By: *Victoria L. Donati*  
Victoria L. Donati, General Counsel  
Euromarket Designs, Inc. dba Crate & Barrel